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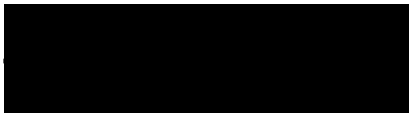
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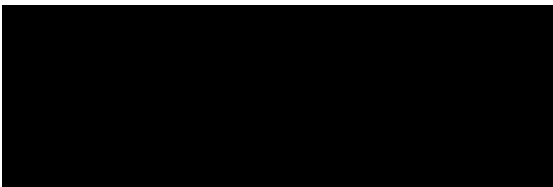
FILE: EAC 03 219 53069 Office: VERMONT SERVICE CENTER Date: DEC 16 2005

IN RE: Petitioner:
Beneficiary:



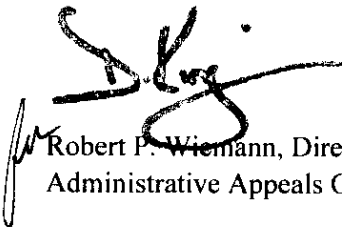
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral researcher at the University of Pennsylvania. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Counsel states that the petitioner "is a biochemist/physiologist specializing in the study of sensory perception of sight, sound, taste and touch (pain and anesthesia) in laboratory animals through state-of-the-art visualization techniques like digital fluorescence imaging, nuclear magnetic resonance spectroscopy and electroretinographic (ERG) study." The petitioner submits several witness letters. All of the witnesses are based in Philadelphia and have worked with the petitioner in that city, either at the University of Pennsylvania, Children's Hospital of Philadelphia, or Monell Chemical Senses Center. Some of the witnesses offer little information other than the assertion that the petitioner is a trained and competent scientist. Others assert only vaguely that the petitioner has earned international recognition for his work.

The director denied the petition, stating that a successful waiver request cannot rest entirely on the petitioner's professional credentials. The director also found that the record did not contain any evidence that the petitioner's work has had a significant impact outside of the Philadelphia institutions where he has worked.

The director specifically noted the petitioner's failure to submit evidence that other researchers in the field have heavily cited the petitioner's work.

In a letter submitted on appeal, Dr. Arkady Lyubarsky of the University of Pennsylvania's Scheie Eye Institute states: "The importance and high quality of [the petitioner's] work is confirmed by a high number of citations (about 60 in only the last 3 years) which exceeds significantly the mean numbers in the field." Sixty citations is indeed a particularly high number, and first-hand documentary evidence of this claim would be a very favorable factor. The record as it stands contains no documentation to support Dr. Lyubarsky's claim. At the same time, we cannot ignore that the director never issued a request for evidence prior to the denial of the petition. The regulations themselves do not specifically mention citations; the emphasis on citations is inferred from the discussion of the impact of a given alien's work in *Matter of New York State Dept. of Transportation*.

8 C.F.R. § 103.2(b)(8) reads, in pertinent part:

If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. . . . Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence. . . . In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence.

Upon consideration, the facts of this case appear to indicate that the issuance of a request for evidence would have been justified. Therefore, the director must afford the petitioner the opportunity to document the citation history claimed on appeal. Acceptable documentation might consist, for example, of a printout from a citation database, or partial copies of the citing articles showing the title page and the citations in question. A simple list of citing articles, with no identified or confirmed source for the information in the list, will not suffice. Because the absence of evidence of citation was provided as a primary basis for denial, any verifiable evidence of heavy citation that the petitioner is able to provide warrants careful consideration.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.